



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 19, 1998

Mr. Alan B. Daughtry
Strasburger & Price, L.L.P.
1221 McKinney Street, Suite 2800
Houston, Texas 77010

OR98-1252

Dear Mr. Daughtry:

On behalf of the Houston Firefighters' Relief and Retirement Fund (the "Fund"), you ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 115775.

The Fund received a request for several items of information. You inform us that the Fund will release to the requestor portions of the requested information. You also state that the Fund has asked the requestor to clarify portions of his request. *See Gov't Code § 552.222(b).* You assert that portions of the information are excepted from required public disclosure based on sections 552.101, 552.102, 552.103, 552.106, 552.107 and 552.111 of the Government Code.

The information at issue includes minutes and recordings of meetings of the Fund's Board of Trustees. You state that the Fund will release to the requestor the requested minutes. *See Gov't Code § 551.022* (making open meeting minutes and tape recordings public records). You assert that any recordings of meetings held in executive session are excepted from required public disclosure based on section 552.101 of the Government Code. We agree. Section 551.104 provides for court-ordered access to the certified agenda or tape recording of an executive session under specific circumstances not present here. *See Open Records Decision No. 495 (1988).*

Section 552.103(a) of the Government Code reads as follows:

(a) Information is excepted from [required public disclosure] if it is information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 588 (1991). A governmental body has the burden of providing relevant facts and documents to show the applicability of an exception in a particular situation. The test for establishing that section 552.103 applies is a two-prong showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.). In this instance, you have made the requisite showing that the requested information relates to pending litigation for purposes of section 552.103(a). The Fund may withhold the requested records based on section 552.103, with the following exceptions.

If the opposing party in the litigation has seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a). Open Records Decision Nos. 349 (1982), 320 (1982). Thus, section 552.103 does not apply to records the opposing party submitted to the Fund or to court-filed records. In addition, section 552.103 does not apply to records made public by statute. Open Records Decision No. 623 (1994). Thus, the Fund may not withhold the minutes of subcommittees of the Board of Trustees. See Gov't Code § 551.022; see also Attorney General Opinion H-238 (1974) (requiring subcommittees of governmental bodies to be subject to Open Meetings Act). Finally, the applicability of section 552.103(a) ends once the litigation is concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

We do not believe the other exceptions you raise apply to the information we have said section 552.103 does not cover. We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Hastings
Assistant Attorney General
Open Records Division

KHH/rho

Ref.: ID# 115775

Enclosures: Submitted documents

cc: Mr. Frederick Dietrich
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(w/o enclosures)